

§ 5.539

who does not have professional counsel to represent him. Investigating officers and counsel should be required to conform to rules of evidence to a greater degree than respondents without counsel.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 97-057, 62 FR 51042, Sept. 30, 1997]

§ 5.539 Burden of proof.

The investigating officer has the burden of proof.

§ 5.541 Official notice by Commandant and Administrative Law Judge.

(a) In addition to other rules providing for judicial notice, the Commandant and the Administrative Law Judges will consider the following without requiring the investigating officer or the respondent to submit them in evidence:

(1) *Federal Law.* The Constitution; Congressional Acts, Resolutions, Records, Journals and Committee Reports; Decisions of Federal Courts; Executive Orders and Proclamations; and rules, regulations, orders and notices published in the FEDERAL REGISTER.

(2) *State law.* The Constitution and public laws of each State.

(3) *Governmental organizations.* The organization, territorial limitations, officers, departments, and general administration of the Government of the United States, its States, territories, possessions and the Commonwealth of Puerto Rico.

(4) *Commandant's decisions.* The Commandant's decisions in all appeal and review cases under this part. (See § 5.65.)

(b) Matters officially noticed by the Commandant or the Administrative Law Judge are specified on the record. The investigating officer and the respondent shall be afforded an opportunity, on the record, to rebut such matters.

§ 5.543 Certification of extracts from shipping articles, logbooks, etc.

(a) In addition to other rules providing for authentication and certification, extracts from records in the custody of the Coast Guard, shipping articles, and logbooks, may be identified and authenticated by certification

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of an investigating officer or custodian of such records, or by any commissioned officer of the Coast Guard.

(b) Certification must include a statement that the certifying individual has seen the original and compared the copy with it and found it to be a true copy. The individual so certifying shall sign name, rank or title, and duty station.

§ 5.545 Weight of entries from logbooks.

(a) An entry in an official logbook of a vessel concerning an offense enumerated in 46 U.S.C. 11501, made in substantial compliance with the procedural requirements of 46 U.S.C. 11502, is admissible in evidence and constitutes prima facie evidence of the facts recited.

(b) An entry in any logbook kept on a vessel may be admitted into evidence as an exception to the hearsay rule, under the Federal Rules of Evidence, as a record of a regularly conducted activity.

(c) An entry in any logbook made in compliance with the procedural requirements of 46 U.S.C. 11502 may be given added weight by the Administrative Law Judge.

§ 5.547 Use of judgment of conviction.

(a) A judgment of conviction by a Federal court is conclusive in proceedings under this part concerning incidents described in 46 U.S.C. 7703, where acts or offenses forming the basis of the charges in the Federal court are the same.

(b) Where the acts involved in a judgment of conviction of a State court are the same as those involved in proceedings under this part concerning incidents described in 46 U.S.C. 7703, the judgment of conviction is not conclusive of the issues decided. However, such judgment of conviction is admissible in evidence and constitutes substantial evidence adverse to the respondent.

(c) The judgment of conviction for a dangerous drug law violation by a Federal or State court is conclusive in proceedings under this part. If as part of a state expungement scheme the respondent pleads guilty or no contest or is required by the court to attend

classes, make contributions of time or money, receive treatment or submit to any manner of probation or supervision or forego appeal of the trial court finding, the respondent will be considered, for the purposes of 46 U.S.C. 7704, to have received a final conviction. A later expungement of the record will not be considered unless it is proved that the expungement is based on a showing that the court's earlier *conviction* was in error.

(d) The respondent may not challenge the jurisdiction of a Federal or State court in proceedings under 46 U.S.C. 7703 and 7704.

§ 5.549 Admissibility of respondent's Coast Guard records prior to entry of findings and conclusions.

(a) The prior disciplinary record of the respondent is admissible when offered by the respondent.

(b) In addition to the use of a judgment of conviction as provided in § 5.547, the prior record of the respondent, as defined in § 5.565, is admissible when offered by the investigating officer for the limited purposes of impeaching the credibility of evidence offered by the respondent regarding a disciplinary record.

§ 5.551 Admissions by respondent.

No person shall be permitted to testify with respect to admissions made by the respondent during or in the course of an investigation under this part or part 4 of this title except for the purpose of impeachment.

§ 5.553 Testimony by deposition.

(a) Testimony may be taken by deposition upon application of either party or upon the initiative of the Administrative Law Judge. The application of a party must be in writing and must contain the reasons for the deposition, the name and whereabouts of the witness and an approximate date, time and place for the deposition hearing. The applicant may request that it be by oral examination, or upon written interrogatories, or a combination thereof. The deposition may be taken before any person authorized to administer oaths.

(b) Upon good cause appearing therefor, the Administrative Law Judge en-

ters and serves upon the parties an order designating the person before whom the deposition is to be taken, together with such other information, directions and orders as will enable the person so designated to obtain the testimony of the deponent. The Administrative Law Judge issues a subpoena in accordance with subpart F of this part which, along with his order and a list of interrogatories and cross-interrogatories, if any, is forwarded to the person designated to take the deposition. This person shall have the subpoena served upon the witness.

(c) The investigating officer and respondent and/or their representatives may attend the taking of a deposition.

(d) After the deposition has been taken and transcribed it is presented to the witness for examination, correction and signature unless such a procedure is waived by the deponent, on the record. The person taking the deposition shall certify to the signature of the witness. If, for any reason, the deposition or interrogatory is not signed by the witness, the person taking the deposition shall recite (under oath) thereon the reason it is not signed.

(e) A deposition upon oral examination may be taken by telephone conference upon such terms, conditions, and arrangements as are prescribed in the order of the Administrative Law Judge.

(f) The testimony at a deposition hearing may be recorded on videotape, upon such terms, conditions, and arrangements as are prescribed in the order of the Administrative Law Judge, at the expense of the party requesting the recording. The video recording may be in conjunction with an oral examination by telephone conference held pursuant to paragraph (e) of this section. After the deposition has been taken, the person taking the deposition shall immediately seal the videotape in an envelope, attaching thereto a statement identifying the proceeding and the deponent and certifying as to the authenticity of the deposition, and return the videotape by accountable means to the Administrative Law Judge. Such deposition becomes a part of the record of proceedings in the